



## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 73

[AU Docket No. 21-39; DA 21-361; FR ID 21109]

#### **Auction of AM and FM Broadcast Construction Permits Scheduled for July 27, 2021; Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 109**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final action; requirements and procedures.

**SUMMARY:** This document summarizes the procedures, deadlines, and upfront payment and minimum opening bid amounts for the upcoming auction of certain AM and FM broadcast construction permits. The *Auction 109 Procedures Public Notice* summarized here is intended to familiarize potential applicants with details of the procedures, terms, and conditions governing participation in Auction 109.

**DATES:** Applications to participate in Auction 109 must be submitted before 6:00 p.m. Eastern Time (ET) on May 11, 2021. Upfront payments for Auction 109 must be received by 6:00 p.m. ET on June 16, 2021. Bidding in Auction 109 is scheduled to start on July 27, 2021.

**FOR FURTHER INFORMATION CONTACT:** *General Auction 109 Information:* FCC Auctions Hotline at 888-225-5322, option two; or 717-338-2868.

*Auction 109 Legal Information:* Lynne Milne or Lyndsey Grunewald at 202-418-0660.

*Licensing Information:* Lisa Scanlan or Tom Nessinger or James Bradshaw at (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 109 Procedures Public Notice*, released on April 1, 2021. The complete text of the *Auction 109 Procedures Public Notice*, including attachments and any related document, are available on the Commission's website at [www.fcc.gov/auction/109](https://www.fcc.gov/auction/109) or by using the search function for AU Docket No. 21-39, DA 21-361, on the Commission's Electronic Comment Filing System (ECFS) web page at [www.fcc.gov/ecfs](https://www.fcc.gov/ecfs). Alternative formats are available to persons with disabilities by sending an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or by calling the Consumer & Governmental Affairs

Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## **I. GENERAL INFORMATION**

1. *Introduction.* By the *Auction 109 Procedures Public Notice*, the Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), establishes the procedures and minimum opening bid amounts for the upcoming auction of certain AM and FM broadcast construction permits.

2. On February 8, 2021, OEA, in conjunction with MB, released a public notice seeking comment on competitive bidding procedures and minimum opening bid amounts to be used in Auction 109. Three parties submitted comments in response to the *Auction 109 Comment Public Notice*, 86 FR 12556, March 4, 2021.

3. *Construction Permits Offered in Auction 109.* Auction 109 will offer four AM construction permits and 136 FM construction permits. The construction permits to be auctioned are listed in Attachment A to the *Auction 109 Procedures Public Notice*.

4. *AM Construction Permits.* Auction 109 will offer four construction permits in the AM broadcast service. Attachment A to the *Auction 109 Procedures Public Notice* lists the community of license, channel, class, and coordinates for each AM permit being offered.

5. The construction permits to be auctioned are for four previously licensed AM stations: KFTK(AM), East St. Louis, IL, former Facility ID No. 72815; WQQW(AM), Highland, IL, former Facility ID No. 90598; KZQZ(AM), St. Louis, MO, former Facility ID No. 72391; and KQQZ(AM), Fairview Heights, IL, former Facility ID No. 5281. The license renewals of each of these former AM stations were dismissed with prejudice in a hearing before the Commission's Administrative Law Judge and the call signs deleted.

6. To facilitate the auction of the four AM permits, the four AM facilities will be treated as existing allotments, using the coordinates, AM station frequency and class, and community of license of the respective AM facility as listed in Attachment A to the *Auction 109 Procedures Public Notice*. The Media Bureau has protected these four AM stations by freezing the filing of any minor modification applications that would be mutually exclusive with the facilities of the four AM stations. Pursuant to that freeze, any AM minor change application that

conflicts with the most recently licensed facilities of these four AM stations may not be filed during a period that started on March 20, 2020, and ends the day after the filing deadline for long-form applications by Auction 109 winning bidders. Because protections only extend to the previously licensed facility parameters, any winning bidder or permittee will be limited in its opportunities to modify these AM permits. Due to the existence of these technical limitations, preferred site coordinates cannot be specified for any of these AM construction permits.

7. *FM Construction Permits.* Auction 109 will also offer 136 construction permits in the FM broadcast service. The construction permits to be auctioned include all of the 130 FM permits that had previously been listed in the inventory for Auction 106, as well as six additional permits. The FM construction permits offered in Auction 109 include 34 construction permits that were offered but not sold or were defaulted upon in prior auctions.

8. Attachment A to the *Auction 109 Procedures Public Notice* lists the specific vacant FM allotments for which the Commission will offer construction permits in this auction, along with the reference coordinates for each vacant FM allotment. These construction permits are for vacant FM allotments reflecting FM channels added to the Table of FM Allotments, 47 CFR 73.202(b), pursuant to the Commission's established rulemaking procedures, and assigned at the indicated communities.

9. Each applicant in the FM service may submit a set of preferred site coordinates on its short-form application (FCC Form 175) as an alternative to the reference coordinates for the vacant FM allotment upon which the applicant intends to bid. In order to avoid potential conflicts between, on the one hand, FM commercial and noncommercial educational (NCE) minor change applications, which can typically be filed on a first-come first-served basis, and, on the other hand, any alternative reference coordinates submitted on an applicant's short form application, MB will not accept any FM commercial or NCE minor change application during the Auction 109 short-form application filing window from April 28, 2021, to May 11, 2021. FM commercial and NCE minor change applications filed during the Auction 109 short-form application filing window will be dismissed. In addition, MB has announced that, in order to promote a more certain and speedy auction process, during a period that started on February 8,

2021 and ending the day after the filing deadline for post-Auction 109, long-form applications, it will not accept any application proposing to modify any FM allotments that will be offered in Auction 109; any petition or counterproposal that proposes a change in channel, class, community, or reference coordinates for any FM allotments that will be offered in Auction 109; nor any application, petition, or counterproposal that fails to fully protect any FM allotment that will be offered in Auction 109. Any such application filed between February 8, 2021 and the day after the filing deadline for post-auction 109, long-form applications will be dismissed.

10. OEA and MB declined to adopt commenters' suggestions to add certain AM facilities and FM allotments to the Auction 109 inventory.

11. An applicant may apply for any AM or FM construction permit listed in Attachment A to the *Auction 109 Procedures Public Notice*. Consistent with our approach in previous broadcast service auctions, when two or more short-form applications (FCC Form 175) are submitted specifying the same permit, mutual exclusivity exists for auction purposes, and that construction permit must be awarded by competitive bidding procedures. As explained in the *Auction 109 Comment Public Notice*, once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid for a particular construction permit, that applicant is required to submit a bid in order to obtain the construction permit.

## **II. APPLYING TO PARTICIPATE IN AUCTION 109**

12. *Relevant Authority.* Auction 109 applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's AM and FM broadcast service and competitive bidding requirements contained in part 73 of the Commission's rules, as well as Commission orders concerning competitive bidding for broadcast construction permits. Applicants must also be thoroughly familiar with the procedures, terms, and conditions contained in the *Auction 109 Procedures Public Notice* and any future public notices that may be released in this proceeding or that relate to the construction permits being offered in Auction 109 or the AM and FM broadcast services.

13. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at [www.fcc.gov/auctions](http://www.fcc.gov/auctions).

14. An applicant should consult the Commission's rules to ensure that, in addition to the materials described below, all required information is included in its short-form application. To the extent the information in the *Auction 109 Procedures Public Notice* does not address a potential applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the following disclosure requirements, the applicant should review the educational materials for Auction 109 and/or use the contact information provided in the *Auction 109 Procedures Public Notice* to consult with Commission staff to better understand the information it must submit in its short-form application.

15. *General Information Regarding Short-Form Applications.* An application to participate in Auction 109, referred to as a short-form application or FCC Form 175, provides information that the Commission uses to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicant's short-form application and certifications, and on its upfront payment, as explained below.

16. A party seeking to participate in Auction 109 must file a short-form application electronically via the FCC's Auction Application System prior to 6:00 p.m. ET on May 11, 2021, following the FCC Form 175 Filing Instructions for this auction in Attachment B to the *Auction 109 Procedures Public Notice*. All those wishing to participate in Auction 109, regardless of

whether they may have previously filed a short-form application for Auction 106, will be required to file a new application to participate in Auction 109.

17. An applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. An applicant must certify on its short-form application under penalty of perjury that it is legally, technically, financially, and otherwise qualified to hold a license. Each applicant should read carefully the instructions set forth in Attachment B to the *Auction 109 Procedures Public Notice* and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information required is included within its short-form application.

18. Submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

19. No individual or entity may file more than one short-form application or have a controlling interest in more than one short-form application. If a party submits multiple short-form applications for an auction, then only one application may be the basis for that party to become qualified to bid in that auction.

20. Consistent with the Commission's general prohibition of joint bidding agreements, a party is generally permitted to participate in a Commission auction only through a single bidding entity. Accordingly, the filing of applications in Auction 109 by multiple entities controlled by the same individual or set of individuals is not permitted. This restriction applies across all applications, without regard to the construction permits selected. Consistent with this requirement, a broadcaster interested in bidding on more than one construction permit cannot use two or more subsidiary entities to bid separately on construction permits in separate markets, regardless of whether each subsidiary were to select different construction permits on its short-form application. Likewise, if an entity, individual, or set of individuals hold controlling

interests in multiple entities that are interested in participating in Auction 109, regardless of whether those entities have other, non-shared controlling or non-controlling interests, those entities must participate in the auction through a single bidding entity and only that bidding entity may file an auction application. In that regard, the bidding entity must disclose in its short-form application any joint ventures or other agreements or arrangements with any commonly controlled, non-applicant entities related to bidding in Auction 109. As noted by the Commission in adopting the prohibition of applications by commonly controlled entities, this rule, in conjunction with the prohibition against joint bidding agreements, protects the competitiveness of our auctions.

21. *Authorized Bidders.* An applicant must designate at least one authorized bidder, and no more than three, in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant or being listed as an authorized bidder in more than one FCC Form 175 application.

22. *Permit Selection.* An applicant must select on its FCC Form 175 the construction permit or permits, from the list of available permits, on which it wants to bid. An applicant must carefully review and verify its construction permit selections before the deadline for submitting the FCC Form 175, because those selections cannot be changed after the initial auction application filing deadline. The FCC auction bidding system will not accept bids on construction permits that were not selected on the applicant's FCC Form 175.

23. *Disclosure of Agreements and Bidding Arrangements.* An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnership, joint venture, consortium, or agreement, arrangement, or understanding of any kind relating to the AM and FM construction permits being auctioned, including any agreement that addresses or communicates directly or indirectly bids (including specific prices), bidding strategies (including the specific construction permit(s) or license(s) on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. In connection with the agreement disclosure requirements, the applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified

each party to, any such agreement, arrangement, or understanding into which it has entered. An auction applicant that enters into any agreement during an auction that relates to the permits or licenses being auctioned is subject to the same disclosure obligations it would have for agreements existing at the FCC Form 175 filing deadline, and it must maintain the accuracy and completeness of the information in its pending auction application.

24. The Commission's rules generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls, or is controlled by, such applicants). For purposes of this prohibition, joint bidding arrangements include arrangements relating to the permits being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits on which to bid, and any such arrangements relating to the post-auction market structure.

25. To implement the prohibition on joint bidding arrangements, the Commission's rules require each auction applicant to certify in its short-form application that it has disclosed any arrangements or understandings of any kind relating to the permits or licenses being auctioned to which it (or any party that controls or is controlled by it) is a party. The applicant must also certify that it (or any party that controls or is controlled by it) has not entered and will not enter into any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with, among others, any other applicant.

26. Although the Commission's rules do not prohibit auction applicants from communicating about matters that are within the scope of an excepted agreement that has been disclosed in an FCC Form 175, the Commission reminds applicants that certain discussions or exchanges could nonetheless touch upon impermissible subject matters, and that compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.

27. Applicants should bear in mind that a winning bidder will be required to disclose in its long-form application following the close of the auction the specific terms, conditions, and parties involved in any agreement relating to the permits or licenses being auctioned into which it had entered prior to the time bidding closed. This applies to any joint venture, partnership, or other agreement, arrangement, or understanding of any kind entered into relating to the

competitive bidding process, including any agreements relating to the permits being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific permits on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.

28. *Ownership Disclosure Requirements.* Each applicant must comply with the ownership disclosure requirements and provide information required by §§ 1.2105 and 1.2112 and, where applicable, 1.2110 of the Commission's rules. Specifically, in completing the FCC Form 175, an applicant will be required to fully disclose information on the real party(ies)-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10% or more, as prescribed in §§ 1.2105 and 1.2112 and, where applicable, 1.2110 of the Commission's rules. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

29. *Foreign Ownership Disclosure Requirements.* Section 310 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 310, requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses. In its FCC Form 175, an applicant must report citizenship or jurisdiction of formation for the applicant and for each disclosable interest holder (DIH). In completing the FCC Form 175, an applicant also will be required to certify that it is in compliance with the foreign ownership provisions contained in section 310 of the Act. Section 1.2105(a)(2)(vi) specifies that the Commission will accept an auction application certifying that a request for waiver or declaratory ruling from the requirements of section 310 is pending. If an applicant has foreign ownership interests in excess of the applicable limit or benchmark specified in section 310(b), it may seek to participate in Auction 109 if it has filed with the Media Bureau prior to the FCC Form 175 filing deadline a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission.

30. *Prohibited Communication and Compliance with Antitrust Laws.* The rules prohibiting certain communications set forth in §§ 1.2105(c) and 73.5002(d) and (e) of the rules apply to each applicant that files an FCC Form 175 in Auction 109. Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the deadline for filing a short-form application all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other in any manner the substance of their own, or each other's, or any other applicant's bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.

31. *Entities Subject to § 1.2105(c).* An applicant for purposes of this rule includes the officers and directors of the applicant, all controlling interests in the entity submitting the FCC Form 175, as well as all holders of interests amounting to 10% or more of that entity. A party that submits an application becomes an applicant under the rule at the application filing deadline, and that status does not change based on later developments, including failure to become a qualified bidder.

32. *Scope of Prohibition on Communications; Prohibition on Joint Bidding Agreements.* Section 1.2105 of the Commission's rules prohibits certain communications between applicants for an auction, regardless of whether the applicants seek permits in the same geographic area or market. The Commission's rules also prohibit any joint bidding arrangement, including arrangements relating to the permits being auctioned, that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits on which to bid, and any such arrangements relating to the post-auction market structure. The rule provides limited exceptions for a communication within the scope of any arrangement consistent with the exclusion from the Commission's rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application. An applicant may continue to communicate pursuant to any pre-existing agreements, arrangements, or understandings that are solely operational or that provide for transfer or assignment of licenses, provided that such agreements, arrangements, or understandings are disclosed on its

application and do not both relate to the permits at auction and address or communicate bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid or the post-auction market structure.

33. In addition to express statements of bids and bidding strategies, the prohibition against communicating in any manner includes public disclosures as well as private communications and indirect or implicit communications. Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.

34. Parties subject to § 1.2105(c) should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant's bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have determined that, where an individual serves as an officer or director for two or more applicants, the bids and bidding strategies of one applicant are presumed conveyed to the other applicant through the shared officer or director, which creates an apparent violation of the rule.

35. Subject to the exception described above, § 1.2105(c)(1) prohibits applicants from communicating with specified other parties only with respect to their own, or each other's, or any other applicant's bids or bidding strategies. Moreover, a communication conveying bids or bidding strategies (including post-auction market structure) must also relate to the licenses being auctioned in order to be covered by the prohibition. Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties. The Commission consistently has made clear that application of the rule prohibiting communications has never required total suspension of essential ongoing business. Entities subject to the prohibition may negotiate agreements during the prohibition period, provided that the communications involved do not relate both (1) to the licenses or permits being auctioned and (2) to bids or bidding strategies or post-auction market structure.

36. Accordingly, business discussions and negotiations that are unrelated to bidding in Auction 109 and that do not convey information about the bids or bidding strategies of an applicant, including the post-auction market structure, are not prohibited by the rule. While §

1.2105(c) does not prohibit business discussions and negotiations among auction applicants that are not auction related, each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

37. *Communicating with Third Parties.* Section 1.2105(c) does not prohibit an applicant from communicating bids or bidding strategies to a third-party, such as a consultant or consulting firm, counsel, or lender. The applicant should take appropriate steps, however, to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other specified parties, as that would violate the rule. For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party. Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, so long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate applicants. Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability if a violation of the rule has occurred.

38. Applicants may discuss the short-form application or bids for specific permits with their counsel, consultant, or expert of their choice before the short-form application deadline. Furthermore, the same third-party individual could continue to give advice to multiple applicants regarding their applications after the short-form application deadline, provided that no information pertaining to bids or bidding strategies is conveyed to that individual from any of the applicants the individual advises. No person may serve as an authorized bidder for more than one applicant in Auction 109.

39. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, even though communicating that it has applied to participate in this auction will not violate the rule, an applicant's statement to the press that it intends to stop bidding in an auction could give rise to a finding of a § 1.2105 violation. Similarly, an FCC Form 175 applicant's public statement of intent not to place bids during bidding in Auction 109 could also violate the rule.

40. *Section 1.2105(c) Certification.* By electronically submitting its FCC Form 175, each applicant in Auction 109 certifies its compliance with §§ 1.2105(c) and 73.5002(d) of the rules. However, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated these communication prohibitions may be subject to sanctions.

41. *Duty to Report Prohibited Communications.* Section 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate § 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

42. *Procedures for Reporting Prohibited Communications.* Section 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by § 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 109 Procedures Public Notice*. For Auction 109, such reports must be filed with the Chief of the Auctions Division, OEA, by the most expeditious means available. Any such report should be submitted by email to the Auctions Division Chief at the

following email address: auction109@fcc.gov. If you choose instead to submit a report in hard copy, contact Auctions Division staff for guidance at auction109@fcc.gov or (202) 418-0660.

43. A party reporting any communication pursuant to § 1.65 or § 1.2105(a)(2) or (c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of § 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions Division staff about the procedures for submitting such reports.

44. *Winning Bidders Must Disclose Terms of Agreements.* Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement relating to the competitive bidding process it has entered into. Such agreements must have been entered into prior to the filing deadline for short-form applications. This disclosure requirement applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

45. *Antitrust Laws.* Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of § 1.2105(c) will not insulate a party from enforcement of the antitrust laws. To the extent the Commission becomes aware of specific allegations that suggest that violations of the Federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it

may be subject to forfeiture of its upfront payment, down payment, or full bid amount, and may be prohibited from participating in future auctions, among other sanctions.

46. *New Entrant Bidding Credits.* To promote the objectives of section 309(j) of the Act and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission provides a tiered new entrant bidding credit for broadcast auction applicants with no, or very few, other media interests.

47. The *Auction 109 Procedures Public Notice* explains why OEA and MB are unable to establish for Auction 109 a bidding credit for a party that had successfully petitioned for a vacant FM channel to be added to the FM Table of Allotments, as suggested by a commenter.

48. Applicants that qualify for the new entrant bidding credit are eligible for a bidding credit in this auction that represents the amount by which a bidder's winning bid is discounted. The size of a new entrant bidding credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders. A 35% bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008. A 25% bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008. No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the broadcast permit proposed in the auction, as defined in 47 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities. For purposes of determining whether a broadcast permit offered in this auction is in the same area as an applicant's existing mass media facilities, the coverage area of the to-be-auctioned facility is calculated using maximum class facilities at the AM construction permit coordinates or the FM allotment reference coordinates specified in

Attachment A to the *Auction 109 Procedures Public Notice*, not, based on any applicant-specified preferred site coordinates for FM allotments.

49. Bidding credits are not cumulative; qualifying applicants receive either the 25% or the 35% bidding credit, but not both.

50. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit. Attributable interests are defined in 47 CFR 73.3555 and note 2 of that section. In Auction 109, the bidder's attributable interests, and thus, its maximum new entrant bidding credit eligibility, are determined as of the short-form application filing deadline. An applicant intending to divest a media interest or make any other ownership change, such as resignation of positional interests (officer or director) in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit, must have consummated such divestment transactions or have completed such ownership changes by no later than the FCC Form 175 filing deadline. However, events occurring after the short-form application filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit and, must be reported immediately.

51. Under broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include: (1) all officers and directors of a corporate bidder; (2) any owner of 5% or more of the voting stock of a corporate bidder; (3) all general partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and (4) all members of a limited liability company, unless sufficiently insulated.

52. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant.

53. The eligibility standards for the New Entrant Bidding Credit include attribution of the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or

entity with an equity and/or debt interest in an applicant shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33% of the total asset value of the applicant, even if such an interest is non-voting.

54. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the applicant's other mass media interests in determining its eligibility for a New Entrant Bidding Credit. A medium of mass communications is defined in 47 CFR 73.5008(b). Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among media of mass communications as defined in § 73.5008(b).

55. *Application Requirements.* If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. In addition to the ownership information required pursuant to §§ 1.2105 and 1.2112, applicants seeking a New Entrant Bidding Credit are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for the bidding credit. In those cases, a certification under penalty of perjury must be provided in completing the short-form application. An applicant claiming that it qualifies for a 35% New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders has any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25% New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

56. *Unjust Enrichment.* Unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

57. *Former and Current Defaulters.* Pursuant to the rules governing competitive bidding, each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in Auction 109. Accordingly, each applicant must certify under penalty of perjury on its FCC Form 175 that, as of the filing deadline, the applicant, any of its affiliates, any of its controlling interests, and any of the affiliates of its controlling interests are not in default on any payment for a Commission construction permit or license (including down payments), and that they are not delinquent on any non-tax debt owed to any Federal agency.

58. An applicant is considered a former defaulter or a former delinquent when it or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies, as of the FCC Form 175 filing deadline. A former defaulter or delinquent who has remedied all such defaults and cured all of the outstanding non-tax delinquencies prior to the FCC Form 175 filing deadline in this auction may participate so long as it is otherwise qualified, if the applicant makes an upfront payment that is 50% more than would otherwise be required. For this reason, an applicant must certify under penalty of perjury whether it (along with any of its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including a down payment) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions described in 47 CFR 1.2105(a)(2)(xii).

59. Applicants should review previous guidance provided on default and delinquency disclosure requirements in the context of the auction short-form application process. Applicants also may consult with Auctions Division staff if they have questions about delinquency or default disclosure requirements.

60. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United

States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. When adopting that rule, the Commission explicitly declared, however, that its competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of §§ 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

61. The Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of § 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current red light status is not necessarily determinative of its eligibility to participate in an auction (or whether it may be subject to an increased upfront payment obligation). Moreover, any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Each applicant should carefully review all records and other available Federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, currently owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency.

62. *Optional Applicant Status Identification.* An applicant owned by members of minority groups and/or women, as defined in § 1.2110(c)(3), or that is a rural telephone company, as defined in § 1.2110(c)(4), may identify itself as such in filling out its FCC Form 175. This applicant status information is optional and collected for statistical purposes only because it assists the Commission in monitoring the participation of various groups in its auctions.

63. *Noncommercial Educational Status Election.* If an FCC Form 175 filed during the Auction 109 filing window identifying the application's proposed station as noncommercial

educational (NCE) is mutually exclusive with any application filed during that window for a commercial station, the NCE application will be returned as unacceptable for filing and the applicant will not be provided with any further opportunity to become eligible to bid in this auction. Short-form applications that do not identify the facilities proposed in the FCC Form 175 as NCE will be considered, as a matter of law, applications for commercial broadcast stations. For this reason, each prospective applicant in this auction should consider carefully whether it wishes to propose NCE operation for any AM or FM station acquired in this auction. This NCE election cannot be reversed after the initial application filing deadline.

64. *Only Minor Modifications to FCC Form 175 Allowed.* After the initial application filing deadline, an applicant will be permitted to make only minor modifications to its short-form application. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person, or change in the applicant's selected bidding option (electronic or telephonic). A major modification to an FCC Form 175 (*e.g.*, change of construction permit selection, change in the required certifications, change in control of the applicant such as any change in ownership or control that would constitute an assignment or transfer of control of the applicant) will not be permitted after the initial FCC Form 175 filing deadline. If an applicant makes a major amendment, as defined by § 1.2105(b)(2), the major amendment may result in the disqualification of the applicant from participating in bidding. Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660.

65. *Duty to Maintain Accuracy and Completeness of FCC Form 175.* Each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in its pending application in a competitive bidding proceeding. An auction applicant must furnish additional or corrected information to the Commission within five days after a significant occurrence, or amend its FCC Form 175 no more than five days after the applicant becomes aware of the need for the amendment. In accordance with the Commission's rules, an applicant's obligation to make modifications to a pending auction application in order to provide additional

or corrected information continues beyond the five-day period, even if the report is not made within the five-day period. An applicant is obligated to amend its pending application even if a reported change is considered to be a major modification that may result in the dismissal of its application.

66. *Modifying an FCC Form 175.* During the initial filing window, an applicant will be able to make any necessary modifications to its FCC Form 175 in the Auction Application System. An applicant that has certified and submitted its FCC Form 175 before the close of the initial filing window may continue to make modifications as often as necessary until the close of that window; however, the applicant must re-certify and re-submit its FCC Form 175 before the close of the initial filing window to confirm and effect its latest application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date. Additional information on the procedures for modifying an FCC Form 175 appear in Attachment B to the *Auction 109 Procedures Public Notice*.

67. As with filing the FCC Form 175, any amendment(s) to the application and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority and that the contents of the amendment or statement of fact are true and correct.

### **III. PREPARING FOR BIDDING IN AUCTION 109**

68. *Due Diligence.* Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permit(s) it is seeking in this auction. The FCC makes no representations or warranties about the use of this spectrum or these construction permits for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction. An FCC auction does not constitute

an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.

69. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, each potential bidder should perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 109 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. For example, potential applicants should note the short-spacing restrictions for FM allotment MM-FM1192-B, Channel 300B, at Sacramento, California. Each applicant should inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, to confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding any applicable Federal, state, and local requirements.

70. The Media Bureau has protected the parameters of the four previously-licensed AM stations that were on the relevant frequencies in the St. Louis area. Because protections only extend to those previously licensed station parameters, the winning bidders will be limited in their opportunities to modify these AM construction permits. For example, to the extent that any of these four previously licensed stations had contour overlap with nearby stations in violation of § 73.37 or § 73.187 of the rules, the winning bidder for that AM construction permit will be limited to the parameters of the previously licensed station on that frequency, and will not be permitted to make such overlap worse. Furthermore, to the extent that any of the four previously licensed AM stations exceeded the root-sum-square (RSS) contribution limits in § 73.182 of the rules, a winning bidder will be limited to the nighttime RSS contributions of the previously-licensed St. Louis area AM station. Generally, a winning bidder may avail itself of any grandfathered situation involving the relevant previously licensed St. Louis area AM station.

71. Each applicant should continue to conduct its own research throughout Auction 109 in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision to continue participating in the auction. Each Auction 109 applicant is responsible for assessing the likelihood of the various possible outcomes and for

considering the potential impact on construction permits available in this auction. The due diligence considerations mentioned in the *Auction 109 Procedures Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

72. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 109. Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

73. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third-party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

74. *Bidder Education – Online Tutorial on Auction Process.* An educational auction tutorial is available on the Auction 109 web page. This online tutorial provides information about pre-auction procedures, the FCC auction application system, completing short-form applications, auction conduct, the FCC auction bidding system, auction rules, and broadcast services rules. The online auction tutorial is accessible on the Education tab of the Auction 109 website at [www.fcc.gov/auction/109](http://www.fcc.gov/auction/109). This tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in the *Auction 109 Procedures Public Notice*.

75. *Short-Form Application Filing Deadline.* In order to be eligible to bid in Auction 109, in addition to other requirements, an applicant must first follow the procedures to submit a short-form application (FCC Form 175) for the relevant auction electronically via the FCC Auction Application System, following the instructions set forth in Attachment B to the *Auction 109 Procedures Public Notice*. The short-form application will become available with the opening of the initial filing window and must be submitted prior to 6:00 p.m. ET on May 11, 2021. Late applications will not be accepted. No filing fee is required to be paid at the time of filing a short-form application.

76. Applications may be filed at any time beginning at noon ET on April 28, 2021, until the filing window closes at 6:00 p.m. ET on May 11, 2021. Applicants are strongly encouraged to file early and are responsible for allowing adequate time to file their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the initial filing deadline on May 11, 2021.

77. An applicant must always click on the CERTIFY & SUBMIT button on the Certify & Submit screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment B to the *Auction 109 Procedures Public Notice*. Applicants requiring technical assistance should contact FCC Auctions Technical Support at (877) 480-3201, option nine; (202) 4141250; or (202) 414-1255 (text telephony (TTY)). Hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

78. *Correction of Application Deficiencies by Minor Modifications.* After the deadline for filing auction applications, Commission staff will review all timely submitted applications for Auction 109 to determine whether each applicant has complied with the application requirements and whether it has provided all required information concerning its qualifications for bidding. After this review is completed, OEA and MB will issue a public notice announcing applicants' initial application status by identifying (1) those that are complete;

(2) those that are rejected; and (3) those that are incomplete or deficient because of minor defects that may be corrected. This public notice also will establish an application resubmission filing window, during which an applicant may make permissible minor modifications to its application to address identified deficiencies. The public notice will include the deadline for resubmitting corrected applications, and a paper copy will be sent by overnight delivery to the contact address listed in the FCC Form 175 for each applicant. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and phone number of a Commission staff member who can answer questions specific to the application. To become a qualified bidder, an applicant must have a complete application (i.e., have timely corrected any identified deficiencies) and make a timely and sufficient upfront payment. Qualified bidders will be identified by public notice at least 10 days prior to the mock auction.

79. After the application filing deadline on May 11, 2021, applicants can make only minor corrections or updates to their applications. They will not be permitted to make major modifications.

80. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact representative notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on behalf of the applicant. Authorizations may be sent by email to [auction109@fcc.gov](mailto:auction109@fcc.gov).

81. *Public Notice of Final Application Status After Upfront Payment Deadline.*  
After Commission staff review resubmitted applications for Auction 109 and evaluate upfront payment submissions, Commission staff will release a public notice identifying applicants that have become qualified bidders. A public notice announcing qualified bidders will be issued before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Forms 175 that are deemed timely filed and complete, and which have made a timely and sufficient upfront payment (as described below).

82. *Upfront Payments.* In order to be eligible to bid in this auction, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, February 2003 edition) must be submitted before 6:00 p.m. ET on June 16, 2021, following the procedures outlined below and the instructions in Attachment C to the *Auction 109 Procedures Public Notice*. After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159. This FCC Form 159 can be printed and the completed form must be sent by fax to the FCC at (202) 418-2843, or by email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov).

83. *Making Upfront Payments by Wire Transfer.* All upfront payments must be made by wire transfer. No other payment method is acceptable. All payments must be made in U.S. dollars. Upfront payments for Auction 109 go to a U.S. Treasury account number specific to Auction 109 and different from the accounts used in previous FCC auctions. Do not use a beneficiary account number from a previous auction. Wire transfer information is specified in the Making Upfront Payments by Wire Transfer section of the *Auction 109 Procedures Public Notice*.

84. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete Form 159. To avoid untimely payments, an applicant should discuss arrangements and deadlines with its financial institution (including that financial institution's specific wire transfer requirements) several days before they plan to make the wire transfer, and well ahead of the due date, as well as allowing sufficient time for the wire transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant is responsible for obtaining confirmation from its financial institution that its wire transfer to the U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. As a regulatory requirement, the U.S. Treasury screens all payments from all financial institutions before deposits are made available to specified accounts. If wires are suspended, the U.S. Treasury may direct questions regarding any

transfer to the financial institution initiating the wire. Each applicant must take care to assure that any questions directed to its financial institution(s) are addressed promptly. To receive confirmation from Commission staff requesting receipt and deposit of wire transfers, contact Scott Radcliffe of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418-7518, or Theresa Meeks at (202) 418-2945.

85. Failure to deliver a sufficient upfront payment as instructed in the *Auction 109 Procedures Public Notice* by the 6:00 p.m. deadline on June 16, 2021, will result in dismissal of the short-form application and disqualification from participation in the auction.

86. *Completing and Submitting FCC Form 159.* An accurate and complete FCC Form 159 (February 2003 edition) must be sent to the FCC to accompany each upfront payment. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed Form 159 to the FCC at (202) 418-2843. Alternatively, the completed form can be scanned and sent as an attachment to an email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov). On the fax cover sheet, write: Wire Transfer – Auction Payment for Auction 109.

87. *Upfront Payments and Bidding Eligibility.* OEA and MB adopted the upfront payment amount proposed for each construction permit in Attachment A of the *Auction 109 Comment Public Notice*, except that the upfront payment amount for Allotment MM-FM1237-C1, Big Lake, Texas is reduced because the minimum opening bid for that permit should be lower than the amount initially proposed, as discussed below. The specific upfront payment amounts and bidding units for each construction permit in Auction 109 are specified in Attachment A to the *Auction 109 Procedures Public Notice*.

88. An applicant must make an upfront payment sufficient to obtain bidding eligibility on the construction permits on which it will bid. OEA and MB proposed in the *Auction 109 Comment Public Notice* that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round. Under that proposal, in order to bid on a particular construction permit, a qualified bidder must have selected the construction permit on its FCC Form 175 and

must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be qualified to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round. The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

89. OEA and MB received no comments on the proposal that the upfront payment amount would determine a bidder's initial eligibility. Therefore, OEA and MB adopted this proposal. Each applicant's upfront payment amount will determine that bidder's initial bidding eligibility.

90. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

91. An applicant that is a former defaulter, as described above, must pay an upfront payment 50% greater than that required of an applicant that is not a former defaulter. For purposes of this rule, defaults and delinquencies of the applicant itself and its controlling interests are included. If an applicant is a former defaulter, it must calculate its upfront payment for all of its selected construction permits by multiplying the number of bidding units on which it wishes to be active (bid on or hold provisionally winning bids on) during a given round by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If an

applicant fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, the applicant will not be eligible to participate in bidding in the auction. This applicant will retain its status as an applicant in Auction 109 and will remain subject to 47 CFR 1.2105(c), 73.5002(d).

92. *Auction Registration.* All qualified bidders for Auction 109 are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the web address and instructions for accessing and logging in to the auction bidding system, FCC assigned username (User ID) for each authorized bidder, and the Auction Bidder Line phone number.

93. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by the contact representative for a qualified bidder by noon on Tuesday, July 20, 2021, call the Auctions Hotline at (717) 338-2868. In no event, however, will the FCC send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175. Receipt of this registration mailing is critical to participating in the auction, and each qualified bidder is responsible for ensuring it has received all of the registration materials.

94. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auctions Hotline at (717) 338-2868.

95. The SecurID® tokens can be recycled, and bidders should return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once bidding in the auction has ended.

96. *Remote Electronic Bidding via the FCC Auction Bidding System.* The

Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each qualified bidder will be issued three SecurID® tokens. For security purposes, the SecurID® tokens, bidding system web address, FCC assigned username, and the telephonic bidding telephone number are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 109.

97. The Commission makes no warranties whatsoever, and shall not be deemed to have made any warranties, with respect to the FCC Auction Application System and the auction bidding system, including any implied warranties of merchantability or fitness for a particular purpose. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of use, loss of revenue, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction Application System or the FCC auction bidding systems that are accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC auction systems.

98. To the extent an issue arises with the auction bidding system itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably. Should an issue arise that is outside the auction bidding system or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or Internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remedy such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the auction bidding system, the Commission shall have no

obligation to resolve or remedy such an issue on behalf of the bidder. Accordingly, after the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the auction bidding system.

99. *Mock Auction.* All qualified bidders will be eligible to participate in a mock auction on Friday, July 23, 2021. The mock auction will enable bidders to become familiar with the FCC auction bidding system prior to the auction. All bidders should participate in the mock auction. Details will be announced by public notice.

100. *Fraud Alert.* As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 109 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the FCC as well as the Federal Trade Commission (FTC), Securities and Exchange Commission (SEC) and the National Fraud Information Center. Additional sources of information for potential bidders and investors are described in the *Auction 109 Procedures Public Notice*.

101. *Environmental Review Requirements.* Permittees or licensees must comply with the Commission's rules for environmental review under the National Environmental Policy Act, the National Historic Preservation Act, and other Federal environmental statutes. The construction of a broadcast facility is a Federal action, and the permittee or licensee must comply with the Commission's environmental rules for each such facility. These environmental rules require, among other things, that the permittee or licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the permittee or licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The permittee or licensee must prepare environmental assessments for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. In addition, the

permittee or licensee must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

#### **IV. BIDDING**

102. The first round of bidding for Auction 109 will begin on Tuesday, July 27, 2021. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released at least one week before the start of bidding in the auction.

##### **A. Auction Structure**

103. *Simultaneous Multiple Round Auction.* In the *Auction 109 Comment Public Notice*, OEA and MB proposed to auction all construction permits listed in Attachment A of this *Auction 109 Procedures Public Notice* in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. OEA and MB received no comment on this proposal, and this proposal was adopted. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

104. *FCC Auction Bidding System.* All bidding will take place remotely either over the Internet through the FCC auction bidding system or by telephone using the telephonic bidding option. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes. All telephone calls are recorded.

105. An Auction 109 bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits selected by that applicant in its FCC Form 175 and (2) the bidder's bidding eligibility measured in bidding units. The FCC auction

bidding system will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

106. In order to access the bidding function of the FCC auction bidding system, bidders must be logged in during a bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

107. *Round Structure.* The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders in the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

108. In the *Auction 109 Comment Public Notice*, OEA and MB proposed to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. OEA and MB received no comment on these proposals and adopted them for Auction 109. OEA and MB may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors, by prior announcement.

109. *Eligibility and Activity Rules.* In Auction 109, upfront payments will be used to determine initial (maximum) bidding eligibility (as measured in bidding units) for Auction 109. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active (bid or hold provisionally winning bids) in a given round. Each construction permit is assigned a specific number of bidding units as listed in Attachment A to the *Auction 109 Procedures Public Notice*. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. Eligibility cannot be increased during the auction; it can only remain

the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units on which it may wish to bid or hold provisionally winning bids in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit. OEA and MB received no comments on the bidding eligibility proposals, and these proposals are adopted.

110. To ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active (bid or hold provisionally winning bids) on a specified percentage of their current bidding eligibility during each round of the auction. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new bids in the current round and provisionally winning bids from the previous round.

111. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and it increases by stage as the auction progresses. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

112. In response to a commenter's suggestion that the auction should begin with an activity requirement lower than that proposed in the *Auction 109 Comment Public Notice*, OEA and MB adopted a more flexible activity requirement in the *Auction 109 Procedures Public Notice*. Accordingly, OEA and MB initially adopt two activity requirements: an 80% requirement for the beginning of the auction and a 95% requirement that will be used later in the auction. These requirements will be implemented using auction stages, as described below.

113. *Auction Stages*. OEA and MB will conduct the auction in at least two stages as described below. Under this approach, a bidder desiring to maintain its current bidding eligibility

will be required to be active on construction permits representing at least 80% of its current eligibility during each round of Stage One, and on at least 95% of its current bidding eligibility in Stage Two.

114. *Stage One:* During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 80% of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths ( $5/4$ ).

115. *Stage Two:* During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95% of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths ( $20/19$ ).

116. *Stage Transitions.* OEA and MB intend to advance the auction from Stage One to Stage Two after considering a variety of measures of auction activity including, but not limited to, the percentages of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue.

117. The auction will start in Stage One. Prior to moving from Stage One to Stage Two or to any subsequent stages, OEA and MB will alert bidders by announcement in the bidding system. Because activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. In past auctions, some bidders have inadvertently

lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity at stage transitions.

118. OEA and MB have the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant. In addition to transitioning to Stage Two, OEA and MB retain the discretion to change the activity requirements during the auction by other means, including adding an additional stage with a higher activity requirement, not transitioning to Stage Two, and transitioning to Stage Two with an activity requirement that is higher or lower than 95%. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of construction permits (as measured in bidding units) on which there are new bids.

119. *Activity Rule Waivers.* For Auction 109, OEA and MB adopted the proposal to provide each bidder in the auction with three activity rule waivers, which are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

120. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. A bidder may use an activity rule waiver in any round of the auction as long as the bidder has not used all of its waivers.

121. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waiver remaining, or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, therefore meeting the activity requirement. If the bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

122. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the activity rule described above. Reducing eligibility is an irreversible action once the round has closed, and a bidder cannot regain its lost bidding eligibility.

123. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the *proactive waiver* function in the FCC auction bidding system) during a bidding round in which no bids are placed, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there is no new bid or a proactive waiver will not keep the auction open.

124. *Auction Stopping Rule.* For Auction 109, OEA and MB proposed to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid or applies a proactive waiver.

125. OEA and MB also sought comment on alternative versions of the simultaneous stopping rule for Auction 109:

Option 1. The auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places any new bid on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

Option 2. The auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bid on any construction permit that already has a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on

an FCC-held construction permit (a construction permit that does not have a provisionally winning bid) would not keep the auction open under this modified stopping rule.

Option 3. The auction would close using a modified version of the simultaneous stopping rule that combines Option 1 and Option 2 above.

Option 4. The auction would close after a specified number of additional rounds (special stopping rule) to be announced in advance in the FCC auction bidding system. If OEA and MB invoke this special stopping rule, bids will be accepted in the specified final round(s), after which the auction will close.

Option 5. The auction would remain open even if no bidder places any new bid or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

126. OEA and MB proposed to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, OEA and MB are likely to attempt to change the pace of the auction. For example, OEA and MB may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. OEA and MB proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction. OEA and MB received one comment regarding stopping rule Option 2. The commenter cautioned against the use of Option 2, but indicated that this option should remain available. OEA and MB adopted these approaches for Auction 109.

127. *Auction Delay, Suspension, or Cancellation.* By public notice or by announcement through the FCC auction bidding system, OEA and MB may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of

competitive bidding. In such cases, OEA and MB, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. This authority will be exercised solely at the discretion of OEA and MB, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

## **B. Bidding Procedures**

128. *Minimum Opening Bids and Acceptable Bid Amounts.* Consistent with the mandate of section 309(j) of the Act, the Commission directed OEA and MB to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

129. In the *Auction 109 Comment Public Notice*, OEA and MB did not propose to establish separate reserve prices for the construction permits in Auction 109, and OEA and MB found no basis for establishing any separate reserve price in the *Auction 109 Procedures Public Notice*. This is consistent with policy applied in earlier broadcast spectrum auctions. OEA and MB, however, proposed to establish minimum opening bids for each construction permit in Auction 109, reasoning that a minimum opening bid, which has been used in other auctions, is an effective tool for accelerating the competitive bidding process. The bidding system will not accept bids lower than the minimum opening bids for each construction permit. Based on experience in past auctions, setting minimum opening bid amounts judiciously is an effective tool for accelerating the competitive bidding process.

130. OEA and MB adopted the minimum opening bid amounts proposed in the *Auction 109 Comment Public Notice*., except that the minimum opening bid for Allotment MM-FM1237-C1, Big Lake, Texas is lowered to \$35,000 after further analysis in response to one commenter's filing. The specific minimum opening bid and upfront payment amounts for each construction permit are set forth in Attachment A to the *Auction 109 Procedures Public Notice*.

131. In each round of Auction 109 a qualified bidder will be able to place a bid on a given construction permit in any of up to nine different amounts. The FCC auction bidding system interface will list the nine acceptable bid amounts for each construction permit.

132. In the *Auction 109 Comment Public Notice*, to calculate the first of the acceptable bid amounts, OEA and MB proposed to use a minimum acceptable bid increment percentage of 10%. This means that the minimum acceptable bid amount for a construction permit will be approximately 10% greater than the provisionally winning bid amount for the construction permit. To calculate the eight additional acceptable bid amounts, OEA and MB proposed in the *Auction 109 Comment Public Notice* to use an additional bid increment percentage of 5%. The Commission did not receive any comments on these proposals to use 10% and 5% respectively in the calculation of nine acceptable bid amounts for each construction permit. Based on OEA and MB experience in previous broadcast auctions, a minimum acceptable bid increment percentage of 10% and an additional bid increment percentage of 5% are sufficient to ensure active bidding. Therefore, OEA and MB will begin the auction with a minimum acceptable bid increment percentage of 10% and an additional bid increment percentage of 5%.

133. In Auction 109, the minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount by one plus the minimum acceptable bid percentage—i.e., provisionally winning bid amount \* 1.10, rounded. In accordance with the Commission's standard rounding procedure for auctions, results of this calculation above \$10,000 will be rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 will be rounded to the nearest \$100; and results below \$1000 will be rounded to the nearest \$10.

134. In Auction 109, the FCC auction bidding system will calculate the eight additional bid amounts by multiplying the minimum acceptable bid amount by the additional bid increment percentage of 5%, and that result (rounded) is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional

acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. Because the additional bid increment percentage is 5%, the calculation of the additional increment amount is (minimum acceptable bid amount) \* (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2\*(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3\*(additional increment amount)); etc.

135. OEA and MB proposed to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, and the number of acceptable bid amounts if circumstances so dictate, consistent with past practice. OEA and MB also proposed to retain the discretion to do so on a construction permit-by-construction permit basis. OEA and MB also proposed to retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, OEA and MB could set a \$1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid increment percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid.

136. The sole commenter to address this issue expressed support for the proposal to retain discretion to change the minimum acceptable bid amounts, yet suggested that OEA and MB should not exercise this discretion until several bidding rounds have concluded when more price information is available. OEA and MB did not receive any other comments on these proposals concerning changes of bid amounts. OEA and MB typically exercise this discretion based on monitoring of ongoing bidding and reserved such discretion in the *Auction 109*

*Procedures Public Notice.* If OEA and MB exercise this discretion, bidders will be alerted by announcement in the FCC auction bidding system during the auction.

137. *Provisionally Winning Bids.* Consistent with practice in past auctions, the FCC auction bidding system at the end of each bidding round will determine a provisionally winning bid for each construction permit based on the highest bid amount received for that permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids.

138. OEA and MB will use a pseudo-random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids). Accordingly, the FCC auction bidding system will assign a pseudo-random number to each bid upon submission. The tied bid with the highest pseudo-random number wins the tiebreaker and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit. As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.

139. *Bid Removal and Bid Withdrawal.* In the *Auction 109 Comment Public Notice*, OEA and MB explained bid removal procedures in the FCC auction bidding system. Each qualified bidder has the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By removing a bid within a round, a bidder effectively unsubmits the bid. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

140. Bidders in Auction 109 are prohibited from withdrawing any bid after close of the round in which that bid was placed. OEA and MB adopted the prohibition in recognition of the site-specific nature and wide geographic dispersion of the permits available in this auction, as well as experience with past auctions of broadcast construction permits. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed in Auction 109, even if a bid was mistakenly or erroneously made.

141. *Bidding Results.* Bids placed during a round will not be made public until the conclusion of that round. After a round closes, OEA and MB will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC-held, and bidder eligibility status (bidding eligibility and activity rule waiver), and post the reports for public access.

142. *Auction Announcements.* The Commission staff will use auction announcements to report necessary information to bidders, such as schedule changes. All auction announcements will be available by clicking a link in the FCC auction bidding system.

## **V. POST-AUCTION PROCEDURES**

143. Shortly after bidding has closed, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and the long-form applications.

144. *Down Payments.* Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 109 to 20% of the net amount of its winning bid(s) (gross bid(s) less any applicable new entrant bidding credit(s)).

145. *Final Payments.* Each winning bidder will be required to submit the balance of the net amount of its winning bid(s) within ten business days after the applicable deadline for submitting down payments.

146. *Long-Form Applications.* The Commission's rules currently provide that within thirty days following the close of bidding and notification to the winning bidders, unless a longer

period is specified by public notice, each winning bidder must electronically submit a separate, properly completed long-form application for each permit won, and required exhibits, along with the applicable application filing fee. Winning bidders for FM construction permits will electronically file FCC Form 2100, Schedule 301-FM, in the Media Bureau's Licensing and Management System (LMS). Winning bidders for AM construction permits will electronically file FCC Form 301 in the Media Bureau's Consolidated Data Base System (CDBS).

147. A winning bidder is required to submit an application filing fee with each long-form application. 47 CFR 1.1104. The application filing fee must be paid in addition to the winning bid amount. The Commission recently adopted a new long-form application filing fee that includes an amount to recover costs for processing the short-form application. The amended § 1.1104, which specifies filing fees for AM and FM long-form applications, is not yet in effect. The long-form application filing fee that is in effect when such form is filed will be the applicable fee.

148. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

149. *Default and Disqualification.* Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment as described in 47 CFR 1.2104(g)(2). This default payment consists of a deficiency payment, equal to the difference between the amount of the Auction 109 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

150. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. The additional default payment for Auction 109 is 20% of the applicable bid.

151. Finally, in the event of a default, the Commission has the discretion to re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

152. *Refund of Remaining Upfront Payment Balance.* All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. This written authorization must comply with the refund instructions provided in the *Auction 109 Procedures Public Notice*.

## **VI. PROCEDURAL MATTERS**

153. *Paperwork Reduction Act.* The Office of Management and Budget (OMB) has approved the information collections in the Application to Participate in an FCC Auction, FCC Form 175, OMB Control No. 3060-0600. The *Auction 109 Procedures Public Notice* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.

154. *Congressional Review Act.* The Commission will submit the *Auction 109 Procedures Public Notice* to the Administrator of the Office of Management and Budget Office of Information and Regulatory Affairs for concurrence as to whether these procedures are major or non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Auction 109 Procedures Public Notice* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

155. *Supplemental Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *Broadcast Competitive Bidding*

*Notice of Proposed Rulemaking* (NPRM), 62 FR 65392, December 12, 1997, and other Commission NPRMs (collectively, *Competitive Bidding NPRMs*) pursuant to which Auction 109 will be conducted. Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the *Broadcast Competitive Bidding Order*, 63 FR 48615, September 11, 1998, and other Commission rulemaking orders (collectively, *Competitive Bidding Orders*) pursuant to which Auction 109 will be conducted. In this proceeding, a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 109 Comment Public Notice*, 86 FR 12556, March 4, 2021. The Commission sought written public comment on the proposals in the *Auction 109 Comment Public Notice*, including comments on the Supplemental IRFA. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the *Competitive Bidding Orders* to reflect the actions taken in the *Auction 109 Procedure Public Notice* and conforms to the RFA.

156. *Need for, and Objectives of, the Public Notice.* The procedures for the conduct of Auction 109 as described in the *Auction 109 Procedures Public Notice* implement the Commission's competitive bidding rules, which have been adopted by the Commission in multiple notice-and-comment rulemaking proceedings. More specifically, the *Auction 109 Procedures Public Notice* provides an overview of the procedures, terms, and conditions governing Auction 109, and the post-auction application and payment processes, as well as setting the minimum opening bid amount for each of the AM and FM broadcast construction permits that are subject to being assigned by competitive bidding

157. To promote the efficient and fair administration of the competitive bidding process for all Auction 109 participants, including small businesses, in the *Auction 109 Procedures Public Notice* OEA and MB announced the following procedures: (1) use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping procedure; (2) a specific upfront payment amount for each construction permit; (3) a specific minimum opening bid amount for each construction permit; (4) a specific number of bidding units for each construction permit; (5) a bidder's initial bidding eligibility will be based on the amount of that bidder's upfront payment; (6) a two-stage auction with an activity

requirement in which a bidder is required to be active on 80% of its bidding eligibility in stage one and 95% of its bidding eligibility in stage two; (7) provision of three activity waivers for each qualified bidder to allow it to preserve bidding eligibility during the course of the auction; (8) use of minimum acceptable bid amounts and additional acceptable increments, along with the methodology for calculating such amounts; (9) a procedure for breaking ties if identical high bid amounts are submitted on one permit in a given round; (10) a prohibition on bid withdrawals; and (11) establishment of an additional default payment percentage of 20% of the applicable bid in the event that a winning bidder defaults or is disqualified after the auction

158. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically addressed the Supplemental IRFA.

159. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comment filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed procedures as a result of those comments. The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 109 Comment Public Notice*.

160. *Description and Estimate of the Number of Small Entities to Which the Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted in the *Auction 109 Procedures Public Notice*. The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

161. The specific competitive bidding procedures and minimum opening bid amounts described in the *Auction 109 Procedures Public Notice* will affect all applicants participating in

Auction 109. The number of entities that may apply to participate in Auction 109 is unknown. Based on the number of applicants in prior FM auctions, OEA and MB estimate that the number of applicants for Auction 109 may range from approximately 130 to 260. This estimate is based on the number of applicants who filed short-form applications to participate in previous auctions of FM construction permits held to date, an average of 1.8 short-form applications were filed per construction permit offered, with a median of 1.2 applications per permit. The actual number of applicants for Auction 109 could vary significantly as any individual's or entity's decision to participate may be affected by a number of factors beyond the Commission's knowledge.

162. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. According to the most recent rulemaking order to assess annual regulatory fees, Commission staff identified from the Media Bureau's licensing databases 9,636 licensed radio facilities subject to annual regulatory fees as of October 1, 2019, excluding from this count radio stations exempt from required annual regulatory fees.

163. The SBA has established a small business size standard for this category as firms having \$41.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999, and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

164. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database (BIA) as of January 26, 2021, nearly all AM and FM full-service radio stations (approximately 15,478 of 15,483 total stations, or 99.97%) had revenues of \$41.5 million or less and thus qualify as small entities under the SBA definition. The SBA size standard data, however, does not enable a meaningful estimate of the number of small entities who may participate in Auction 109.

165. Also, in assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included. This estimate therefore likely overstates the number of small entities that might be affected by this auction because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which Auction 109 competitive bidding procedures may apply does not exclude any radio station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Furthermore, OEA and MB are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. It is difficult to assess these criteria in the context of media entities and therefore estimates of small businesses to which they apply may be over-inclusive to this extent.

166. OEA and MB are unable to accurately develop an estimate of how many of the entities in this auction would be small businesses based on the number of small entities that applied to participate in prior broadcast auctions because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in auctions of licenses for wireless services).

167. In 2013, the Commission estimated that 97% of radio broadcasters met the SBA's prior definition of small business concern, based on annual revenues of \$7 million. The SBA has since increased that revenue threshold to \$41.5 million, which suggests that an even greater percentage of radio broadcasters would fall within the SBA's definition. The Commission has estimated the number of licensed commercial AM radio stations to be 4,347 and the number of commercial FM radio stations to be 6,699, for a total number of 11,046 radio stations. As of January 2021, 4,347 AM stations and 6,694 FM stations had revenues of \$41.5 million or less, according to Commission staff review of the BIA Database. Accordingly, based on this data, OEA and MB that the majority of Auction 109 applicants would likely meet the SBA's definition of a small business concern.

168. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* For Auction 109, no new reporting, recordkeeping, or other compliance requirements for small entities or other auction applicants were proposed. The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. For all spectrum auctions, in the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the auction application process, there are additional compliance requirements for winning bidders. Thus, a small business that fails to become a winning bidder does not need to file a long-form application and provide the additional showings and more detailed demonstrations required of a winning bidder.

169. Auction 109 applicants, including small entities, will become qualified to bid in Auction 109 only if they comply with the following: (1) submission of a short-form application that is timely and is found to be substantially complete, and (2) timely submission of a sufficient upfront payment for at least one of the construction permits that the applicant selected on its FCC Form 175. In accordance with the terms of 47 CFR 1.2105(b)(2), an applicant whose application is found to contain deficiencies will have a limited opportunity to bring its application into compliance with the Commission's competitive bidding rules during a resubmission window. In addition, each Auction 109 applicant must maintain the accuracy of its previously filed short-form application electronically using the FCC auction application system.

170. In the second phase of the process, there are additional compliance requirements only applicable to winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the terms of the following rules, among others: (1) 47 CFR 1.2107(b), by submitting as a down payment within 10 business days after release of the auction closing public notice sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 109 to 20% of the amount of

its winning bid or bids; (2) 47 CFR 1.2109(a), by submitting within 10 business days after the down payment deadline the balance of the amount for each of its winning bids; and (3) 47 CFR 73.5005(a), by electronically filing a properly completed long-form application and required exhibits for each construction permit won through Auction 109.

171. Further, as required by 47 CFR 1.2105(c), reports concerning prohibited communications must be filed with the Chief of the Auctions Division, as detailed in the *Auctions 109 Procedures Public Notice*.

172. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. See 5 U.S.C. 603(c)(1)-(4).

173. OEA and MB intend that the procedures adopted in the *Auctions 109 Procedures Public Notice* to facilitate participation in Auction 109 will result in both operational and administrative cost savings for small entities and other auction participants. In light of the numerous resources that will be available from the Commission to small entities and other auction participants at no cost, the processes and procedures announced in the *Auctions 109 Procedures Public Notice* should minimize any economic impact of the auction processes and procedures on small entities and should result in both operational and administrative cost savings for small entities and other auction participants. For example, prior to the beginning of bidding in this auction, the Commission will hold a mock auction to allow qualified bidders the opportunity to familiarize themselves with both the processes and systems that will be used in Auction 109. During the auction, participants will be able to access and participate in bidding via the Internet using a web-based system, or telephonically, providing two cost-effective methods of

participation and avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of a telephone hotline for assistance with auction processes and procedures as well as a technical support telephone hotline to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction bidding system. In addition, all auction participants, including small business entities, will have access to various other sources of information and databases through the Commission that will aid in both their understanding and participation in the process. These mechanisms are made available to facilitate participation by all qualified bidders and may result in significant cost savings for small business entities that utilize these mechanisms. These resources, coupled with the description and communication of the bidding procedures before bidding begins in Auction 109, should ensure that the auction will be administered predictably, efficiently and fairly, thus providing certainty for small entities as well as other auction participants.

174. *Notice to SBA.* The Commission will send a copy of the *Auctions 109 Procedures Public Notice*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA.

Federal Communications Commission.

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